

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

JOANN WRIGHT HAYSBERT,

Plaintiff,

v.

BLOOMIN' BRANDS, INC., et al.

Defendants.

DECLARATION OF NAZARETH M. HAYSBERT REGARDING SERVICE
OF A TRIAL SUBPOENA ON MARCUS WILSON

I, Nazareth M. Haysbert, declare as follows:

1. I am an attorney licensed in the State of California. I am licensed to appear *pro hac vice* in the State of Virginia. I am counsel of record for Plaintiff Joann Wright Haysbert in the above-captioned case. I have personal knowledge of the following facts, and, if called as a witness, I could and would testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the email sent from me to my process server company, BFRM Legal, at 9:00 a.m., EST, on Friday, August 11, 2023, requesting that Marcus Wilson be served with the appropriate trial subpoena attached to the email, along with the required witness fees.

3. Attached hereto as **Exhibit B** is a true and correct copy of an email from BFRM Legal, sent to me at 11:14 a.m., EST, on August 11, 2023, confirming receipt of my request.

4. Attached hereto as **Exhibit C** is a true and correct copy of an email from BFRM Legal to Carol Donaldson at Bay Legal Process in Virginia Beach, sent at 3:24 p.m., EST, on August 11, 2023, attaching the trial subpoenas for Marcus Wilson, and stating that witness fees would be sent separately to Ms. Donaldson.

5. Attached hereto as **Exhibit D** is a true and correct copy of an email from Bree Weathers at BFRM Legal, sent to me at 7:00 p.m., EST, on August 11, 2023, providing a status of service for Marcus Wilson, and verifying that witness fees had been advanced.

6. Attached hereto as **Exhibit E** is a true and correct copy of an email from Bree Weathers at BFRM Legal, sent to me at 10:51 a.m., EST, on August 12, 2023, attaching the proof of service of the trial subpoena for Marcus Wilson.

7. Attached hereto as **Exhibit F** is a true and correct copy of the proof of service for Marcus Wilson, signed by Ms. Donaldson.

8. Ms. Donaldson has confirmed that she will personally appear before the Court at 10:00 a.m., EST, on Monday, August 14, 2023, to answer any questions the Court may have about service of the trial subpoena on Marcus Wilson, and confirmed her understanding that she may be put under oath at this proceeding.

I declare under penalty of perjury under the laws of the State of Virginia and the United States of America, that the foregoing is true and correct.

Executed on August 13, 2023, at Norfolk, Virginia.

/s/ Nazareth M. Haysbert
Nazareth M. Haysbert, Esq.


EXHIBIT A

Urgent Trial Subpoenas

nazareth hmlaw.la <nazareth@hmlaw.la>

Fri 8/11/2023 6:00 AM

To:support@bfrmlegal.net <support@bfrmlegal.net>

 5 attachments (4 MB)

Alicia Eleftherion NON-PMK.pdf; Alicia Eleftherion PMK.pdf; Marcus Wilson 1.pdf; Marcus Wilson 2.pdf; Marcus Wilson 3.pdf;

Support Staff,

Please serve by noon, EST, or as soon as possible today. Please advance fees (\$40 per day witness fee rate plus mileage).

Thank you!

Sincerely,
Nazareth

EXHIBIT B

RE: Urgent Trial Subpoenas

support@bfrmlegal.net <support@bfrmlegal.net>

Fri 8/11/2023 8:14 AM

To: nazareth hmlaw.la <nazareth@hmlaw.la>

Good morning,

We're in receipt of your request. These are addressed to the same person so I'm assuming if we can serve them at one address we do not need to attempt the remaining addresses, correct?

Best Regards, Bree Weathers

Process Department Manager

BFRM LEGAL SUPPORT SERVICES

Ph: (877) 353-4313 FAX: (213) 986-3142

Email: support@bfrmlegal.net

Web: www.bfrmlegal.com

LOCATIONS: Los Angeles, San Diego, San Francisco, Orange County, The Inland Empire, The Antelope Valley

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Document Retrieval / Document Duplication

Please register on our Portal to be able to E-file with the California State Courts

and to Electronically Record Documents by clicking on the link below.

<https://bfrmlegal.legalconnect.com/registration>

From: nazareth hmlaw.la <nazareth@hmlaw.la>

Sent: Friday, August 11, 2023 6:01 AM

To: support@bfrmlegal.net

Subject: Urgent Trial Subpoenas

Support Staff,

Please serve by noon, EST, or as soon as possible today. Please advance fees (\$40 per day witness fee rate plus mileage).

Thank you!

Sincerely,

Nazareth


EXHIBIT C

Fwd: FW: Urgent Trial Subpoenas - Marcus Wilson

Carol Donaldson <baylegalprocess@gmail.com>

Sat 8/12/2023 10:15 AM

To: nazareth hmlaw.la <nazareth@hmlaw.la>

 3 attachments (2 MB)

Marcus Wilson 1.pdf; Marcus Wilson 2.pdf; Marcus Wilson 3.pdf;

Does this work?

----- Forwarded message -----

From: <support@bfrmlegal.net>

Date: Fri, Aug 11, 2023 at 12:24 PM

Subject: FW: Urgent Trial Subpoenas - Marcus Wilson

To: Carol Donaldson <baylegalprocess@gmail.com>

Hi Carol,

These are the other 3 subpoenas for Virginia Beach. I will send the witness fees separately.

Best Regards, Bree Weathers

Process Department Manager

BFRM LEGAL SUPPORT SERVICES

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EXHIBIT D

FW: Urgent Trial Subpoenas

support@bfrmlegal.net <support@bfrmlegal.net>

Fri 8/11/2023 4:00 PM

To:nazareth hmlaw.la <nazareth@hmlaw.la>

 2 attachments (2 MB)

Alicia Eleftherion PMK.pdf; Marcus Wilson 2.pdf;

Please see status of service below:

ALICIA ELEFThERION- SERVED AT 1:55 PM- THOMAS BIRD-MANAGER
FEES ADVANCED \$114.32

MARCUS WILSON- SERVED AT 5:25 PM- DEVIN STANCIL- MANAGER
FEES ADVANCED \$142.40

Best Regards, Bree Weathers

Process Department Manager

BFRM LEGAL SUPPORT SERVICES

Ph: (877) 353-4313 FAX: (213) 986-3142

Email: support@bfrmlegal.net

Web: www.bfrmlegal.com

LOCATIONS: Los Angeles, San Diego, San Francisco, Orange County, The Inland Empire, The Antelope Valley

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Document Retrieval / Document Duplication**

**Please register on our Portal to be able to E-file with the California State Courts
and to Electronically Record Documents by clicking on the link below.**

<https://bfrmlegal.legalconnect.com/registration>

From: nazareth hmlaw.la <nazareth@hmlaw.la>

Sent: Friday, August 11, 2023 6:01 AM

To: support@bfrmlegal.net

Subject: Urgent Trial Subpoenas

Support Staff,

Please serve by noon, EST, or as soon as possible today. Please advance fees (\$40 per day witness fee rate plus mileage).

Thank you!

Sincerely,
Nazareth

EXHIBIT E

Re: FW: Urgent Trial Subpoenas

BFRM LEGAL SUPPORT SERVICES <support@bfrmlegal.net>

Sat 8/12/2023 7:51 AM

To:nazareth hmlaw.la <nazareth@hmlaw.la>

Cc:brian@bfrmlegal.net <brian@bfrmlegal.net>

 2 attachments (2 MB)

Alicia Eleftherion PMK.pdf; Marcus Wilson 2.pdf;

Please see attached proofs

Best Regards, Bree Weathers

Process Department Manager

BFRM LEGAL SUPPORT SERVICES

Ph: (213) 291-8383 FAX: (213) 986-3142

Email: support@bfrmlegal.net

Web: www.bfrmlegal.com

LOCATIONS: Los Angeles, San Diego, San Francisco, Orange County, The Inland Empire, The Antelope Valley

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<https://bfrmlegal.legalconnect.com/registration>

On Fri, Aug 11, 2023 at 10:47 PM nazareth [hmlaw.la](mailto:nazareth@hmlaw.la) <nazareth@hmlaw.la> wrote:

Brian,

Looping you in here. Sorry to bother you on a weekend. Can you put me in touch with the process server that served Marcus Wilson? The Court needs a POS by tomorrow. If you want, I can reach out to the process server directly for it. Please provide their contact details and that will avoid bothering you on a weekend.

Nazareth

On Aug 11, 2023 10:00 PM, "nazareth [hmlaw.la](mailto:nazareth@hmlaw.la)" <nazareth@hmlaw.la> wrote:

The Court is requesting the Proof of Service be forwarded tomorrow. Can you have the process server provide me with the POS tonight? Thank you!

Nazareth

On Aug 11, 2023 7:00 PM, support@bfrmlegal.net wrote:

Please see status of service below:

ALICIA ELEFOTHERION- SERVED AT 1:55 PM- THOMAS BIRD-MANAGER

FEES ADVANCED \$114.32

MARCUS WILSON- SERVED AT 5:25 PM- DEVIN STANCIL- MANAGER

FEES ADVANCED \$142.40

Best Regards, Bree Weathers

Process Department Manager

BFRM LEGAL SUPPORT SERVICES

Ph: (877) 353-4313 FAX: (213) 986-3142

Email: support@bfrmlegal.net

Web: www.bfrmlegal.com

LOCATIONS: Los Angeles, San Diego, San Francisco, Orange County, The Inland Empire, The Antelope Valley

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Please register on our Portal to be able to E-file with the California State Courts

and to Electronically Record Documents by clicking on the link below.

<https://bfrmlegal.legalconnect.com/registration>

From: nazareth [hmlaw.la](mailto:nazareth@hmlaw.la) <nazareth@hmlaw.la>

Sent: Friday, August 11, 2023 6:01 AM

To: support@bfrmlegal.net

Subject: Urgent Trial Subpoenas

Support Staff,

Please serve by noon, EST, or as soon as possible today. Please advance fees (\$40 per day witness fee rate plus mileage).

Thank you!

Sincerely,

Nazareth

EXHIBIT F

UNITED STATES DISTRICT COURT

for the

JoAnn Wright Haysbert

Plaintiff

v.

Bloomin' Brands, Inc., et al.

Defendant

Civil Action No. 4:20-cv-00121-RBS-DEM

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Marcus Wilson, 1757 Laskin Road, Virginia Beach, Virginia 23464

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: 600 Granby Street, Norfolk, Virginia 23510

Courtroom No.: Hon. Rebecca Beach Smith

Date and Time: August 11 and 14, 2023; 10am - 6pm

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: August 9, 2023

CLERK OF COURT

OR

/s/ Nazareth M. Haysbert, Esq.

*Signature of Clerk or Deputy Clerk**Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiff

JoAnn Wright Haysbert, who issues or requests this subpoena, are:

Nazareth M. Haysbert, Haysbert | Moultrie, LLP, 100 Wilshire Blvd., Suite 700, Santa Monica, CA 90401, Tel: (310) 917 1056, Email: nazareth@hmlaw.la

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Marcus Wilson
on *(date)* 08/11/2023 .

☒ I served the subpoena by delivering a copy to the named person as follows: Devin Stancil- Manager

_____ on *(date)* 08/11/2023 at 5:25 PM ; or

☐ I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ 142.40 .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 08/12/2023



Server's signature

Carol Donaldson, Process Server

Printed name and title

BFRM Legal Support Services
633 W 5th St, 28th Fl
Los Angeles, CA 90071

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

CERTIFICATE OF SERVICE

JOANN WRIGHT HAYSBERT v. BLOOMIN' BRANDS, INC., et al., Case No.:
4:20-cv-00121-RBS-DEM

I hereby certify that on this August 13, 2023, a true and accurate copy of the foregoing was sent via email:

I served this document on the persons below:

John D. McGavin, VSB No. 21794

jmcgavin@bmhlaw.com

Nicholas J. Lawrence, VSB No. 76964

nlawrence@bmhlaw.com

Anna G. Zick VSB No. 86057

azick@bmhlaw.com

BANCROFT, McGAVIN, HORVATH & JUDGKINS, P.C.

9990 Fairfax Blvd., Suite 400

(703) 385-1000 Telephone

(703) 385-1555 Facsimile

Counsel for Defendant

DATED: August 13, 2023

CRANDALL & KATT

By: /s/ D. Adam McKelvey, Esq.

D. Adam McKelvey, Esq. (75174)

366 Elm Avenue, SW

Roanoke, VA 24016

Telephone: (540) 342-2000

Facsimile: (540) 345-3527

dmckelvey@crandalllaw.com

DATED: August 13, 2023

NAZARETH M. HAYSBERT, ESQ. [CA
SBN 294431] (admitted *pro hac vice*)

nazareth@hmlaw.la

HAYSBERT | MOULTRIE, LLP

4640 Admiralty Way, Suite 500

Marina Del Rey, California 90292

Tel: (310) 496-5796

Fax: (310) 496-5701

Attorneys for Plaintiff JoAnn Wright Haysbert